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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 ORACLE AMERICA, INC.,

19 Plaintiff,

20 v.

21 GOOGLE INC.,

22 Defendant.

Case No. 3:10-cv-03561-WHA

**GOOGLE INC.'S MOTION TO  
CONTINUE THE TRIAL DATE FROM  
APRIL 16, 2012 TO APRIL 23, 2012**

Dept: Courtroom 8, 19<sup>th</sup> Flr.  
Judge: Hon. William Alsup

**NOTICE OF MOTION AND MOTION TO CONTINUE TRIAL**

PLEASE TAKE NOTICE that Defendant Google Inc. ("Google") hereby moves to continue the April 16, 2012 trial date to April 23, 2012. This Motion is based on the following memorandum of points and authorities in support, the Declaration of Robert A. Van Nest in support thereof, the entire record in this matter, and on such evidence as may be presented at any hearing of this Motion, on a date and at a time to be determined by the Court.

Dated: March 15, 2012

KEKER & VAN NEST LLP

By: /s/ Robert A. Van Nest  
ROBERT A. VAN NEST

Attorneys for Defendant GOOGLE INC.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

The Court should continue the trial one week, from April 16, 2012 to April 23, 2012. There is good cause for a continuance because Google's lead trial counsel (along with several other attorneys on the Google trial team) is set for an April 2 trial in another case in the Eastern District of Texas. A one-week continuance would allow lead counsel to return from Texas in time for the start of this trial. A short continuance would not prejudice Oracle, and would leave open a full eight weeks of trial time in which to try this case. Google's motion should be granted.

### II. BACKGROUND

Google's lead trial counsel is Robert Van Nest of Kecker & Van Nest LLP. Declaration of Robert A. Van Nest ("Van Nest Decl.") ¶ 2. In a March 14, 2012 letter to the Court [Dkt. 792] Mr. Van Nest advised the Court of two pending trial commitments that conflicted with the April 16 trial date in this case. Since that letter was filed, Judge Davis has moved the *Commonwealth Scientific and Industrial Research Organization v. Lenovo (United States) Inc.*, E.D. Tex. No. 6:09-cv-399 LED, trial from April 9, 2012 to April 2, 2012. And Judge Koh has issued an order proposing that the start of the *Genentech Inc. v. Trustees of the University of Pennsylvania*, N.D. Cal. No. 5:10-cv-02037 LHK (PSG) trial be moved from June 11, 2012 to June 25, 2012.

Assuming the *Genentech* trial is in fact delayed two weeks,<sup>1</sup> there would exist an available eight-week window from April 23 to June 15 in which the Court could try this case. Google therefore modifies its original request [Dkt. 792] to seek a one-week continuance of the trial date in this case, from April 16, 2012 to April 23, 2012. As stated in Google's March 14 letter to the Court, Mr. Van Nest would promptly advise the Court of any changes to the trial schedules in the above-referenced cases. Van Nest Decl. ¶ 6.

### III. ARGUMENT

A court schedule may be modified upon a showing of good cause. Fed. R. Civ. P. 16(b)(4); *see also* Civ. L.R. 6-3. There is good cause for a one-week continuance here because

<sup>1</sup> The parties in the *Genentech* case have until March 16 to respond to Judge Koh's proposal.

Google's lead counsel (and other attorneys on the Google trial team) needs time to return from the *Commonwealth Scientific* trial in Texas and make final preparations for the start of the trial in this case. *See, e.g., Felder v. Puthuff*, C-93-20303-RPA (EAI), 1995 WL 16821 (N.D. Cal. Jan. 13, 1995) (granting a motion to continue trial date where counsel had an immovable trial conflict in another case). Accordingly, the Court should grant Google's motion.

Notwithstanding Judge Davis' order advancing the *Commonwealth Scientific* trial date by one week, a short continuance of the trial date in this case is necessary to ensure that Mr. Van Nest and several other members of the Google trial team are able to be prepared for and present at the start of this trial. Although the scope of this case has been significantly reduced as a result of pretrial proceedings, Oracle is still seeking nearly \$1 billion in damages. The *Commonwealth Scientific* trial poses a potential conflict with the start of this trial for Mr. Van Nest and two other attorneys on Google's trial team who also are involved in the *Commonwealth Scientific* trial: namely, Christa Anderson and Matthias Kamber. Van Nest Decl. ¶ 3. The *Commonwealth Scientific* trial is now set to begin on April 2. Van Nest Decl. ¶ 4. The seven defendants in that case have estimated that trial will require ten days. *Id.* If the trial lasts ten days, juror deliberations may well continue past the April 16, 2012 trial date in this case. And even if juror deliberations conclude before April 16, Mr. Van Nest and the other attorneys on both trial teams still would need time to return from Texas and make final preparations for this trial.

A one-week continuance would permit Mr. Van Nest to fulfill his professional obligations to his clients in the *Commonwealth Scientific* case, while still serving as lead trial counsel to Google for the entirety of this matter. Moreover, granting a continuance would not cause a conflict with Judge Koh's trial setting in the *Genentech* case, assuming that that trial is in fact delayed by two weeks as Judge Koh has proposed. This Court therefore would have an eight-week window—April 23 to June 15—in which all counsel would be available to try this case. Accordingly, good cause exists for the requested continuance.

A one-week continuance will not prejudice Oracle. Android was first announced over four years ago and has now been on the market for over three years. The difference between an April 16 trial and an April 23 trial is insignificant. The motion to continue should be granted.

**IV. CONCLUSION**

For the foregoing reasons, Google respectfully requests that the Court continue the trial date from April 16, 2012 to April 23, 2012.

Dated: March 15, 2012

KEKER & VAN NEST LLP

By: /s/ Robert A. Van Nest  
ROBERT A. VAN NEST

Attorneys for Defendant GOOGLE INC.